IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 271 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJCO CARRIERS

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 271 of 1987

MR SN DIVETIA FOR MR NR DIVETIA for the Petitioner

MR BB NAIK for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench `C' has referred the following question for the opinion of the High Court under section 256(1) of the Income Tax Act, 1961 :

"Whether the Income Tax Tribunal is right in law in holding that the assessee was not entitled to depreciation at 40% or even at the rate of 30% on crane mounted on motor truck ?"

2. The matter relates to the Assessment Year 1982-83. The assessee had purchased for Rs.10,87,248=00 a mobile crane on 19th November 1981 and claimed depreciation of Rs.4,34,898=00 at the rate of 40% thereon stating that it was used in the business of running it on hire and so, it will fall under clause E(1A) of Part I of Appendix 1 to the Income Tax Rules, 1962. This was mentioned in the statement of total income filed alongwith the returns for the Assessment Year 1982-83.

3. During the assessment proceedings, the assessee was asked to state reasons why depreciation at the general rate of 10% applicable to machinery and plant under the said Appendix should not be applied as `crane' was not included in the items of machinery to which higher depreciation at 40% was admissible. The assessee replied that the crane was required to be registered with the R.T.O. and it was a heavy motor vehicle and therefore, depreciation at 40% was admissible under Clause III E(1A) of part I of Appendix 1 to the Income Tax Rules. The Income Tax Officer, by simply stating, "crane is not included therein. I therefore grant depreciation only at 10% on crane", disallowed the claim at the rate of 40% made by the assessee under Clause III E(1A) of Part I of Appendix 1.

4. The Commissioner of Income Tax (Appeals) - I, Ahmedabad, before whom the assessee appealed, also negatived its claim by observing: "However, in the absence of any specific mention of `cranes', in the relevant Income Tax Rules, allowing depreciation at the higher rate of 40%, I am unable to accede to the claim of the appellant and uphold the action of the Income Tax Officer in allowing the depreciation at the general rate of 10%".

5. The Tribunal, before whom the order of the C.I.T. (Appeals) was challenged by the assessee, also negatived the claim of the assessee and dismissed its appeal, on

the ground that `crane' was not mentioned in the Table of Rates of Depreciation in Appendix 1. The assessee's contention that crane was an integral part of a lorry was negatived on the ground that this argument was made for the first time before the Tribunal. The Tribunal also held that it was not shown as to how a crane was similar to a fork lift truck to which benefit of a higher rate of depreciation of 30% was allowed under the instructions issued by the C.B.D.T.

6. It was argued by the learned counsel appearing for the assessee that a crane was an integral part of a motor lorry, which means a motor truck, and that cranes were used for lifting and moving goods and that since the assessee's crane was registered as a heavy goods vehicle and was used for hire, the assessee was entitled to the benefit of depreciation at the rate of 40%, as claimed by it. It was also argued that the C.B.D.T. by its instructions issued under section 119 of the said Act, granted benefit of a higher rate of depreciation allowance to fork-lift truck by classifying it under Entry III (ii-D-9) of of Appendix 1, and that a fork-lift truck was also a type of crane and therefore, benefit of higher rate of depreciation should not have been denied to the assessee. It was contended that the list of items in Appendix 1 should be considered to be only illustrative and therefore, cranes which are registered as motor vehicles and are used for hire, should be read under the heading `motor lorries' in Entry III E(1A) of Appendix 1. He pointed out that the assessee's mobile crane was registered with the R.T.O. as intimated by the assessee to the R.T.O. in its letter dated 1st March 1985 and that the R.T.O. registration recorded the fact that it was a mobile crane registered as a heavy motor vehicle and that its registered axle weight which is required to be stated in case of heavy goods motor vehicles or H.M.V. was recorded as 22,000 kgs for the front axle and 18,000 kgs for the rear axle.

6.1 In support of his contentions, the learned counsel for the assessee cited the following decisions :

[a] C.I.T. v. Stanes Tyre & Rubber Products Ltd., reported in 242 ITR 619, a decision of the Madras High Court, was relied upon for the proposition that, while the entry at item No. III-C(7) in Appendix 1 refers to vehicles for personal or family use, the entry at item No. III-D(9) refers to vehicles which are used mainly for hire or reward or for carrying of goods, or for operations connected with agriculture, and that

the fact that vans and three wheelers were not specifically mentioned in the schedule did not disentitle the assessee from claiming depreciation if those vans and three wheelers are capable of being brought under any of the heads mentioned in the schedule.

[b] V.D.Swami & Co. Ltd. v. C.I.T., reported in 225 ITR 439, also a decision of the Madras High Court, was cited to point out that, it was held therein that lift which move up and down with the help of twisted steel rope within a structure, was a machinery.

[c] A decision of the Bombay High Court in M/s Ishardas & Co. v. State of Maharashtra, reported in AIR 1986 BOM. 348 was cited to show that the Bombay High Court held therein that a mobile crane was a motor vehicle within the meaning of section 2(18) of the Motor Vehicles Act, 1939 as amended in 1956.

[c-1] We may here note that in Poomani v. Tuticorn Thermal Power Project, reported in AIR 1990 MADRAS 372, the Madras High Court has also held that a mechanically propelled crane driven on public road is a motor vehicle within the meaning of section 2(18) of the Motor Vehicles Act, 1939. In Harrisons & Crosfield Ltd. v. Kerala State, reported in AIR 1971 KERALA 329, it was held that a tractor fitted with hydraulically operated shovel, though confined in its operation, only to certain factory premises, is a motor vehicle adapted or made suitable for use as such vehicle upon the roads since it has the potential of being so used and can be put to use upon the roads in normal course. In Smt. Nirmal Bhutani v. Haryana State, reported in AIR 1983 P&H 188, the High Court held that a road roller is a `motor vehicle'. In State of Gujarat v. Danabhai Bhulabhai, reported in 1991 (2) GLH 404, this Court held that a bulldozer was a motor vehicle within the meaning of section 2(18) of the Motor Vehicles Act, 1939. In Bose Abraham v. State of Kerala, reported in AIR 2001 SC 835, it was held that the excavators and road rollers are motor vehicles within the meaning of section 2(28) of the Motor Vehicles Act, 1988 and are exigible to tax under Entry Tax Act.

7. The learned counsel for the Revenue submitted

that a crane was not a motor lorry and that the motor lorries are used for loading and unloading goods by transporting them from one place to the other. It was submitted that motor lorries as understood in common parlance would only mean such lorries which are used for transporting goods and a crane cannot by any stretch of imagination be described as a motor lorry. The learned counsel supported the reasoning of the Tribunal and further argued that the Tribunal had arrived at a finding that the item of crane does not fall in any of the specified entries and that since a crane was not a motor lorry nor a fork-lift truck, there is no valid reason to take a different view of the matter. It was contended that the question whether a crane was a motor lorry or not, was a question of fact and relevant material was required to be produced by the assessee if it claimed that its crane was a motor lorry. It was submitted that the Tribunal and the authorities below it had correctly denied the higher rate of depreciation at 40% to the assessee's crane and allowed it at 10% which was applicable to the general category of machinery and plant in Appendix 1.

7.1 In support of his contentions, the learned counsel for the Revenue relied upon the following decisions :

[a] The decision of the Supreme Court in Liberty Oil Mills (P) Ltd. v. Collector of Central Excise, reported in (1995) 1 SCC 451 was cited for the proposition that, in the case of ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the Revenue and not in favour of the assessee.

[b] The decision of the Supreme Court in Sita Devi v. State of Bihar, reported in 1995 Supp. (1) SCC 670 was cited for the proposition that it was a basic rule of interpretation that clear and unambiguous language of a provision has to be given effect to despite suggested absurdity or irrationality. The Supreme Court held that absurdity or irrationality of bringing the enumerated items of agricultural produce within the sweep of the legislation is not a principle of interpretation of the statute and the court cannot strike down the Act on its basis. It was held that, though in the common parlance of animal husbandry, cattle may not be considered to be an agricultural produce, but when the

definition of `agricultural produce' in section 2(1)(a) is an inclusive definition and is of wide import, the same needs to be given effect to unless the legislature lacks competence.

[c] The decision of the Supreme Court in Shree Baidyanath Ayurved Bhavan Ltd. v. Collector of Central Excise, reported in (1996) 9 SCC 402 was relied upon for the proposition that, in interpreting statutes like the Excise Act, the primary object of which is to raise revenue and for which purpose various products are differently classified, resort should not be had to the scientific and technical meaning of the terms and expressions used but to their popular meaning, that is to say the meaning attached to them by those using the product.

[d] The decision of the Supreme Court in Pardeep Aggarbatti v. State of Punjab, reported in (1997) 8 SCC 511 was cited for the proposition that entries in the Schedule of sales tax and excise statutes list where some articles are separately shown and some articles are grouped together, when they are grouped together, each word in the entry draws colour from the other words therein.

[e] The decision of the Supreme Court in The Martand Dairy and Farm v. Union of India, reported in AIR 1975 SC 1492 was cited for the proposition that taxation considerations may stem from administrative experience and other factors of life and not artistic visualisation or neat logic, and so the literal, though pedestrian, interpretation must prevail.

8. As noted above, the assessee had claimed depreciation at 40% on the crane registered by it with the R.T.O. as a heavy goods vehicle. It was a mobile crane and according to the assessee, it was given on hire. These facts were mentioned in the statement of account filed alongwith the assessee's return. On inquiry from the I.T.O., the assessee had again informed the I.T.O. that the higher rate of 40% was claimed by it under Clause E(1A) of Part I of Appendix 1 of the Rules on the crane as it was used in business of running it on hire, which fact is also recorded in the order of the I.T.O. dated 26th March 1985.

9. The allowance of depreciation of machinery under

section 32(1)(ii) of the Income Tax Act, 1961 used for the purposes of business is to be calculated at the percentages specified in the second column of the Table in Part I of Appendix 1, as prescribed by Rule 5 of the Income Tax Rules, 1962.

10. The controversy centres around the question whether mobile crane registered as a heavy motor vehicle under the Motor Vehicles Act and the Rules made thereunder with the R.T.O. would fall within the expression `motor lorries' contained in item III E(1A) of Appendix 1 of the said Rules. The Tribunal has confirmed the orders of the Income Tax Authorities holding that since `cranes' are not mentioned as independent item in Appendix 1, depreciation at the rate of 40% was not admissible to cranes, and that only the rate of 10% was admissible being the general rate applicable to machinery. The Tribunal, rejected the plea of the assessee that crane was an integral part of the motor lorry on which it was mounted and was worked by the same machine which provided traction to the lorry, on the ground that this required ascertainment of facts and fresh investigation. The Tribunal also rejected the assessee's contention that benefit of depreciation at 30% should be given to it since it was given to `fork-lift trucks' under Instructions No. 617 issued on 13-9-1973 by the C.B.D.T. classifying `fork-lift trucks' under item III (ii-D 9) of Appendix 1.

11. Under the heading `Machinery and plant' of item III of Appendix 1, Part I of the Table of Rates at which depreciation is admissible, read with Rule 5 of the Income Tax Rules, various items of machinery and plant are specified with the rates at which depreciation is to be allowed as are mentioned against them.

11.1 The assessee claimed depreciation at 40% on its crane under Item III E(1A) of Appendix 1, which reads as follows :

"E.
(1A) Motor buses, motor lorries and motor taxis used in a business running them on hire."

11.2 In the alternative, the assessee claimed depreciation before the Tribunal on the basis of the C.B.D.T. Instruction No. 617 dated 13-9-1973, which has been reproduced in the order of the Tribunal, as under:

"132. Fork lift trucks - Rate of depreciation

prescribed in Part 1 of Appendix 1 to Income Tax rules.

Fork lift trucks would be classified under item III (ii) - D(9) of Appendix I to the Income Tax Rules, 1962 and would be entitled to depreciation at the rate of 30 per cent."

Item III (ii) - D(9) which is referred to in the aforesaid Instruction No. 617 which relates to fork lift trucks, reads as under :

"Motor buses and motor lorries other than those used in a business of running them on hire."

11.3 In the year 1973, the entry D(9) read as under :

"Motor buses, motor lorries, motor taxis, motor tractors"

12. The origin of word `lorry' is uncertain. `Lorry' means, (i) "a large strong motor vehicle for transporting goods etc.", (ii) "a long flat low wagon, or, (iii) "a truck used on railways or tramways", as per the Concise Oxford Dictionary. As per Webster's II New River Side University Dictionary, the word `lorry', in the meaning relevant to the present context, would mean, `a motor truck'. As per the Encyclopedia Britannica, truck is "also called lorry". Thus, the expression "motor lorries" in Entry III E (1A) of Appendix 1 would mean "motor trucks".

12.1 "Truck" is introduced in following terms in the Encyclopedia Britannica :

"Truck

also called LORRY any motor vehicle designed to carry freight or goods or to perform special services such as fire fighting. The truck was derived from horse-driven wagon technology, and some of the pioneer manufacturers came from the wagon business. Because of their speed and flexibility, trucks have come to carry a quarter of the intercity freight in the United States, and they enjoy an almost total monopoly in intracity freight delivery.

In 1896 Gottlieb Daimler of Germany built the first motor truck. It was equipped with a four-horsepower engine and a belt drive with two

speeds forward and one in reverse. In 1898 the Winton Company of the United States produced a gasoline-powered delivery wagon with a single-cylinder six-horsepower engine.

In World War I motor trucks were widely used, and in World War II they largely replaced horse-drawn equipment. A notable vehicle was the four-wheel-drive, quarter-ton-capacity, short-wheelbase jeep, capable of performing a variety of military tasks."

12.2 Lorry or truck would, therefore, mean not only any motor vehicle designed to carry freight or goods but also to perform special services like fire fighting. Fire engine also called fire truck is a self propelled mobile piece of equipment used in fire fighting. There can be other special services to be performed by motor vehicles designed for such services. Thus, a lorry i.e. truck adapted or designed to carry a crane is meant for special services of lifting load, moving it side by side, rotating it or moving it horizontally. Most industrial trucks permit mechanized pickup and deposit of the loads, eliminating manual work in lifting as well as transporting. The crane truck is a portable boom crane mounted on an industrial truck. It may be used with hooks, grabs, and slings for bundled or coiled material. Industrial trucks which would also come within the expression `motor lorries' are described as follows in the Encyclopedia Britannica.

"Industrial truck

carrier designed to transport materials within a factory area with maximum flexibility in making moves. Most industrial trucks permit mechanized pickup and deposit of the loads, eliminating manual work in lifting as well as transporting. Depending on their means of locomotion, industrial trucks may be classified as hand trucks or power trucks.

Hand trucks with two wheels permit most of the load to be carried on the wheels, but some of the load must be assumed by the operator to balance the truck during movement. Common two-wheel hand trucks include the barrel, box, drum, hopper, refrigerator, paper-roll, and tote-box trucks. Four-wheel hand trucks are found in many more varieties, including dollies, high- and low-bed

flat trucks, carts, rack carriers, wagons, and various hand-lift trucks having mechanical or hydraulic lifting mechanisms for raising and lowering a load.

Power trucks are propelled by batteries and an electric-motor or by an internal - combustion engine with either a mechanical drive or a generator and electric - motor drive. Propane and diesel engines are used in place of gasoline engines on some types. The non-lift platform truck is used simply for hauling, but other power trucks are provided with mechanisms, usually hydraulic, for lifting the loads. Forklift trucks are quipped with a forklike mechanism on the front end designed to pick up loads on specially designed platforms, called pallets, elevate the load to the desired height, transport it, and deposit it at the desired location and height. Ram trucks have a single protruding ram for handling coiled material. The crane truck is a portable boom crane mounted on an industrial truck; it may be used with hooks, grabs, and slings for bundled or coiled material. The straddle truck resembles a gantry crane on four pneumatic - tired wheels; the operator rides above the inverted U-frame, within which the load - lumber, bar steel, or pipe is carried on elevating bolsters. Other common types include high and low lift platform trucks, motorized pedestrian led, side-clamp, tractor, and side-loading trucks."

12.3 It will, thus, be clear that motor vehicles like fire trucks, fork lift trucks and crane trucks which are designed for special services fall within the category of `motor trucks' (also called `motor lorries').

13. The word `crane' when used for an inanimate object means a machine for moving heavy objects usually by suspending them from a projecting arm or beam. Crane is any of a diverse group of machines that not only lift heavy objects but also shift them horizontally. Movable cranes are mounted on railway cars, motor trucks or chassis equipped with caterpillar treads and the hoisting machinery is mounted so as to counterpoise part of the load on the boom and thereby, preventing the entire crane from overturning while carrying the load. The fork lift truck, widely used for moving goods between warehouse storages and shipping vehicles, "is a highly manoeuvrable

crane adaptable to handling drums, crates, or loaded skids or pallets." (See Encyclopedia Britannica under the heading `crane').

13.1 Thus, a `fork-lift truck' is also a type of crane. The expression `truck crane' is well known in the truck industry. "The truck crane is a unit consisting of a crane house and boom mounted on a truck chassis, ... Originally assembled by contractors from crawler cranes and truck parts, the truck crane for years been manufactured and sold as a unit. Although the truck crane is difficult to move on soft or slippery ground, it is highly mobile on a firm footing and is easily moved over roads and highways. (See "Crane Hoist" - McGraw Hill - `Encyclopedia of Science and Technology' - emphasis is added).

13.2 A crane is usually typed according to its undercarriage. Some of the cranes which undercarriage is not a truck are, `crawler cranes' mounted on continuous tracks, the `rail or locomotive crane' on special chasis with flanged wheels for use on railway tracks and `floating crane' on a barge or scow. Therefore, search for the item `cranes' in the Entries in Appendix 1 without keeping in mind the nature of equipment, was based on an erroneous premise. A crane mounted on a truck is a truck crane which is a well known machinery which can easily move over roads and highways and is not a stationary equipment.

13.3 Truck crane is described under the heading `crane' in Encyclopaedia Britannica, as under :

"A commonly used type of small movable crane is the truck crane, which is a crane mounted on a heavy, modified truck. Such cranes frequently use unsupported telescoping booms; these are made up of collapsible sections that can be extended outward like the sections of an old nautical telescope or spyglass. The extension of the boom is usually managed hydraulically. Truck cranes make up in mobility and ease of transport what they lack in hoisting capacity." (emphasis is added).

14. Thus, a mobile crane mounted on a truck constitutes a single unit known as a `truck crane' which is adapted for use upon roads for special services. The truck on which the crane is mounted is constructed and adapted specially to carry the crane.

14.1 `Goods carriage' as defined in section 2(14) of the Motor Vehicles Act, 1988 means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. This definition is not confined only to carriage of freight which is narrower than the expression `carriage of goods'. In the instant case, truck is adapted for use solely for carriage of the crane mounted on it. The mounted crane is attached to the truck which carries it. The test of carrying goods such as potatoes and tomatoes that require loading and unloading in context of carriage of freight when transported, as was suggested on behalf of the Revenue, will not be decisive. Unloading, in the context of truck crane where the crane remains mounted and attached to the truck when carried and even at the destination where it is put to use is not a relevant factor at all. Though not required to be loaded or unloaded like other goods transported in carriage of freight, the crane remains fixed, mounted on the truck which has been adapted for use solely for its carriage and such truck crane is used for special service of lifting and moving heavy objects. This is why such mobile crane is registered as a heavy motor vehicle which is a heavy goods vehicle as defined in section 2(16) of the Motor Vehicles Act.

15. The approach of the Tribunal and the authorities below it that cranes are not mentioned specifically as an independent item falling in the categories for which higher depreciation allowance at the rate of 40% when used for hire and at 30% when not so used has been provided as against 10% of machinery in general, and therefore, they should be treated as falling in the general category of machinery, is an over-simplification of the matter. The approach of the Tribunal that the plea taken by the assessee that crane was an integral part of the motor vehicle on which it is mounted required ascertainment of facts and fresh investigation, amounts to imposing a burden on a person to prove something of which Court or Tribunal can take judicial notice. For example, if a witness deposes that he had seen a horse, the Court need not insist upon him for a proof of the anatomy of a horse and can take a judicial notice of horse as an animal. The Courts and Tribunals are not required to act dumb or ignorant of the facts of which judicial notice can be taken. Thus, just as a court can presume what a horse is, it can as well know what a crane is, and also that crane is an integral part of a truck-crane which is registered as a heavy motor vehicle. Lack of effort and knowledge sufficient for taking such

judicial notice should not be a burden on the citizens in judicial proceedings. As provided by section 56 of the Evidence Act, no fact of which the Court will take judicial notice, need be proved. This equally applies to the Tribunals which are not in fact strictly bound by the rules of evidence.

16. The mobile crane of the assessee which admittedly was registered as a heavy motor vehicle, would, for the above reasons, clearly fall within the expression `motor lorries' (which means motor trucks) in Entry III E(1A) of the Table in Appendix 1 under Rule 5 of the said Rules, since it was used by the assessee in its business of running the crane on hire.

16.1 We, therefore, hold that the Tribunal was not right in holding that the assessee was not entitled to depreciation at the rate of 40% on crane mounted on motor truck. The question referred to us is, therefore, answered in the negative in favour of the assessee and against the Revenue. The reference stands disposed of accordingly with no order as to costs.

FEBRUARY 18, 2002 [R.K.ABICHANDANI, J.]

[K.A.PUJ, J.]

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